DRAFT MEETING MINUTES
WATER POLLUTION CONTROL ADVISORY COUNCIL
10:00 am, Friday, November 3, 2017
Metcalf Building
1520 E. Sixth Ave, Helena, MT 59620

PRESENT

Council Members Present:
Trevor Selch
Karen Sanchez (phone)
Earl Salley
Michael Wendland
Craig Workman (phone)

Council Members Absent:
Stevie Neuman
Kathleen Williams

Montana Department of Environmental Quality Staff Members Present:
Amy Steinmetz
Mike Suplee

Members of the Public Present:
Joe Griffith (phone)
Dirk Johnson (phone)

CALL TO ORDER

Chairperson Selch called the meeting to order.

APPROVAL OF AGENDA

Chairperson Selch moved action items around on the agenda so that the Whitefish Variance will go first, then the SB325 Variance Rulemaking second. Chairperson Selch moved to approve the agenda. There was no opposition and the motion carried.

APPROVAL OF MINUTES

Chairperson Selch moved to accept the April 13th and 28th 2017 meeting minutes.

Steinmetz: Mr. Chair I did a status update for July. We will defer that to another meeting as it isn't on the agenda, but that is why we didn't approve the April minutes as we didn't have a quorum in July.

There were no comments or edits to the April meeting minutes. Chairperson Selch moved to accept them as distributed. The motion was seconded and so moved. If anyone notices anything after the fact, we can change the minutes.

ACTION ITEMS

Numeric Nutrient Standards Variances: Individual Variance for Whitefish, MT – Mike Suplee

Sanchez: A clarification type question about Slide 10, #5b. If the new treatment plant goes online with the variance, and its treatment is better than the 10 and 1 (mg/L) that the variance is for, in the tri-annual review the limit can be lowered to that performance. That's my understanding, so it disincentives doing your best treatment.

Suplee: As linked to this component, you are a little bit incorrect. We have this set up in two phases: Phase 1 lasts for 7 years and that is the 10 and 1. During that time, some optimization, etc. will occur and that will be reflected in the second phase. The thing that isn't quite correct is that every three years when Standards does its review, they won't be looking to see if Whitefish has made small incremental changes that will be immediately reflected in their variance. What we will look at is (a) has the economic status of the community sharply changed? For example, consider Sidney in 2005 versus in the oil boom a couple of years ago. That would be a sharp economic change that might suggest the community can afford more treatment and work towards achieving the standards better. Other than those exceptions of the oil boom communities out in Eastern Montana, most of them are stable. Additionally, Whitefish has already expended a significantly larger amount of money for this facility than they are required by our estimation. So, for Whitefish, we estimate this particular component won't come into play throughout the life of the facility. (b) The other component we look at, this low cost technological, this is more of a big breakthrough. Here we are talking about a type of technology that comes along that could be augmented onto the existing facility without big changes to the users' rates and dramatically reduces nutrients. We have always hinged this entire process on this potential. Whether that will occur or not is another matter. We need to make sure there is a distinction between what these two components the second phase of the variance.

Sanchez: The highest attainable condition is used then in the tri-annual review?

Suplee: The highest attainable condition will be reviewed after that first phase. So, whatever Whitefish has managed to optimize to – 7 or 8 years hence – after the plant has been put online, stabilized, any optimization, any facility changes have occurred, advanced techniques for running the plant – those would be reflected in the second phase of the variance.

Sanchez: So that's where I have a question. Comparing that to Slide 14, I am looking at Circular 12B, the variance doesn't exactly match the Circular. The Circular doesn't talk about Phases, so shouldn't this variance match the circular more. There are definitions for these phases. How does that relate that to circular – should it be raised to match the circular instead of having these phases in there?

Suplee: It matches the circular if you look at the dates of the circular (Slide 15). This start date and sunset date represent Phase 1 so that's where they mesh.

Sanchez: Where in the circular does it talk about Phases or give specific numbers and years?

Suplee: The specific dates and numbers are designed to be put into the table because that's where the details are held. The Phases themselves are a result of DEQ working with Whitefish to mesh not only DEQ rules but also with requirements at the federal EPA level. So, remember – we have two hurdles to jump over to get this Whitefish individual variance approved: state regulations which we updated in 12B to mesh as best we could with the new federal regulations, and the new federal regulations. In conversations with EPA, Whitefish and DEQ, this was the best approach to have an approvable individual variance that would satisfy the state level, Whitefish, EPA and the way they are reviewing and

considering their new rules. They have caveats built around variances that last for more than 5 years; so, this is where we landed.

Sanchez: So, if I'm understanding it – although the DEQ Circular 12B was approved by EPA, the individual variance here and all subsequent ones will have to include estimations of the future EPA requirements? They can't just match the current EPA approved Circular? You have guess at what the future will be to come up with a variance may have three phases?

Suplee: The main aspect of the federal rules that was a bit difficult in relation to our new 12B was the requirement that changes and improvements to a facility that would occur, especially over time periods of more than 5, years need to be reflected in the variance. So that is why it has been broken into two phases. Once that second phase occurs, the economic requirement is almost certainly satisfied for this facility. There will be optimizations over time, and it takes time for these things to occur, and the plant will improve. All that is probably going to lead to concentrations and outputs that are better than it first started out. Those are going to be reflected in the second phase.

Sanchez: Are you saying a city can go along with the timeframe of 5 years that the circular has. But if they want a longer timeframe they need to negotiate that beyond what the circular already has, and has been approved by EPA?

Suplee: I don't know that's what I am saying – no. Longer term variances are not just simply a matter of we give you the number and we're good for the next X number of years. There will be a review along the way to evaluate the improvements that occurred at the facility.

Sanchez: Okay – I guess I am going to stop. It just bothers me that the work group spent so much time on that variance and putting this revised circular together this spring. Now this new terminology is not defined or discussed in the circular. It makes me curious, maybe concerned – but for sure curious.

Suplee: That's fair. As you are aware, the majority – probably 99% - of the work went into determining what those new general variance numbers would look like. We spent little to no time discussing how one would craft an individual variance. So, when Whitefish came on board, simultaneously with the completion of the new circular, we were learning our way forward also. This is the first time the Department has worked on an individual nutrient variance.

Sanchez: Thank you, Mike.

Selch: Does anyone else have any questions for Mike?

Workman (on the phone): I'm pretty sure we have a quorum without my vote, so my preference would be to abstain from any vote that might be made. I do have a couple of comments. In terms of Karen's comments, I think there is sentiment from Whitefish that this second phase was a surprise. We worked with DEQ at several meetings, and I think we came to a consensus on the language. The second phase came about, although the Circular 12B doesn't describe it as such, through clear language about a pollutant minimization plan (PMP) that is to be implemented once the new plant meets the permit requirements. Essentially, we are talking about that PMP in advance of meeting our permit requirements. The language we and DEQ came to grips with simply states that during the second phase Whitefish will not be subjected to any plant improvement that would cause significant changes in user rates. We are comfortable with that. We didn't feel like it was aligned with Circular 12B, but we know

we need to present an application for an individual variance that EPA will approve, so we had to get some Phase 2 language in there. Regarding Karen's comments, I agree that it is not exactly in line with Circular 12B, but we knew that as the first individual variance that Montana was going through with, we knew there would be some questions. Another thing I was going to mention, Whitefish was very involved with the nutrient group as we recrafted 12B. We just submitted our preliminary engineering report to build a sequencing batch reactor plant when the tri-annual review came up. It became apparent quickly during that process that the highest achievable conditions were going to be more stringent than the plant we designed. We began working with DEQ on the individual variance at the same time as we finished working with the nutrient variance group getting 12B through. DEQ and Whitefish agreed mutually that an individual variance would be the best way for Whitefish to go. We now have an application we can move forward to EPA and obtain approval and, hopefully, carry on with our original schedule to be in compliance by 2022.

Salley: I am thinking about Karen's first statement about attaining the maximum treatment with this sequencing batch reactor (SBR) plant. What component of the plant could you change to get better or not as good treatment – the aerators or what? What is the costliest thing about the plant that you can change which would alter the treatment?

Workman: When we started out planning the SBR plant in 2015, these limits of 1 phosphorous and 10 nitrogen were in the discharge permit. We planned for those permit limits and the SBR will readily meet those limits. We got into additional design when the proposed general variance limits were reduced to 6.3 (mg/L N), and the sequencing batch reactor as proposed would not meet those limits. We looked at ways we could modify that plant and bring it down to those levels. To do that, we would have to add another infiltration process, and to add on that process the cost approached $9M. The plant to even meet the 1 and 10 limit is proposed to cost $17.5M. That is a significant expense for Whitefish, a small community of 6,000 people. So, the plant as proposed can meet those nutrient limits of 1 and 10, but to go that next step means a significant change in the treatment plant. That is why the request for consideration of high costs is the basis for the individual economic variance.

Salley: So, it is a passive treatment – if you want better treatment you turn up something?

Workman: No, it's designed to meet 1and 10. In fact, the vendors must guarantee it will meet those limits. Likely, with good operators and when it is not at full design flow condition, it is probably going to work better than 1 and 10. Everyone running a treatment plant desires to do better than the minimum. Unfortunately– as Karen alluded tom if you do better than your permit limit, the next time your permit is renewed it is not unusual for that permit to be ratcheted down to new limits. There is a disincentive in the permitting and standards process to do better than your permit requires because you end up getting your limits reduced next time around. Our plant should do better than those minimums of 1:10, but is certainly not capable of meeting 6 mg/L nitrogen and 0.3 for phosphorous consistently.

Salley: So, you kind of answered the one question of column 6 – 6000 people, that's where they consider the number of caps. Then we can continue talking the economics. What is the revenue source for that second phase, or is it rates that pay it?

Suplee: Craig or Scott could answer that better than me.

Scott Anderson: Significant user rates are going to pay for that additional cost. It used to be that grant or loan programs existed that would cover 50% of the cost, but when you get up into the range of

$17.5M, a TCEP grant of $750,000 and a DNRC grant of $100,000, grant availability is very limited these days for very high cost projects. So, basically it is user rates paying back loans to pay for the plant.

Salley: How long is the loan stretched out?

Anderson: Terms of a loan are typically 20 years. Some communities have had to go to 30 years because of the cost.

Salley: Don't you have a sales tax in that area? Is that utilized in this process?

Workman: There is a resort tax in Whitefish, but there are not allocations in for wastewater treatment plant improvements. We can use resort tax on occasion for road reconstruction to do improvements to the collection system, but we do not allocate resort tax dollars to wastewater treatment. I will note that the recent rate study we completed was adopted by city council in 2016, and it essentially doubles user rates over the next 10 years in anticipation of this SBR plant. We began a series of rate increases in 2016, a second went into effect last month, and we will continue to increase rates for about the next 8 years in anticipation of the plant. It is funded entirely by user rates. We were unsuccessful in getting TCEP during the 2016 biennium. We will attempt again this year.

Chairperson Selch: Other questions? Hearing none – I think DEQ and Mike look for a motion to accept the Whitefish variance numbers as described. There are questions on the process but today we are solely tasked at looking at the proposed Whitefish variance. Open for any motions here.

Sanchez made a motion to approve the request for the Whitefish variance. It was seconded, there was no further discussion, and the motion carried. Even though Craig abstained, there was still a quorum.

SB325 Variance Rulemaking – Myla Kelly

Myla Kelly: In February of 2016, we came to you with a rule package called SB325, Part 2. To refresh your memory, that was a legislative directive from 2015 that directed DEQ to create a process for permittees to request a variance from Water Quality Standards when their contribution is not the driving water quality issue. This is an individual variance that addresses parameters other than nutrients. As Mike showed, we have a separate statutory authority to grant individual and general variances for nutrients. The legislative directive required us to create a process for a permittee to apply for an individual variance under very specific conditions. So, we did a presentation on that process for you in February, and in March we went to the Board of Environmental Review (BER) with a request for initiation of rulemaking. During that BER meeting, the Board expressed some concerns with whether that rule package was consistent with the MAPA (Montana Administrative Procedures Act) process because it directed the applicant to take the individual variance in front of the Board and then get EPA approval. We took that feedback and recrafted the rules to have one fundamental difference: individual variances would be approved by the Department and there would be a separate, additional approval by EPA. I will quickly go through what the rule entails within each section. Then if you have questions, we can discuss it.

This statute directed water quality remediation efforts to focus toward primary polluters - often historic mining instead of the less significant MPDES (Montana Pollutant Discharge Elimination System) dischargers - until the upstream sources of water quality issues have been remediated. Our new rule would set forth the conditions under which the permittee could apply.

The first and second sections of the rule highlight what those specific conditions are and the procedures for how to do that. Sections three and four direct the Department to review the application for variances to make sure other mechanisms such as total maximum daily loads aren't applicable. That directs the Department to take a broader look and make sure the individual variance route is most appropriate for the permittee. Section five is necessary to ensure consistency in the Department's review and approval of the variances. Because variances are exceptions to water quality standards, individual variances must be approved by EPA. Section seven specifies that those variances need to be reviewed every 5 years, which is a statutory requirement. Section eight outlines the public review process for the variance. DEQ must meet very specific public review requirements and those are set forth with state and federal regulations. Section 9 states that any renewal or modification of the variance is subject to the same review and approval process as the initial variance.

Sanchez: At the very bottom of the memorandum introducing the action item it said, "The most substantial change to the rule was the removal of the BER from the individual variance process based on public input." What the question was that resulted in the BER being deleted?

Kelly: I think those are two separate issues. We did have public comment on the process but that was not the driving factor for that change in the Department reviewing the rules versus the BER. That was a comment from the Board itself questioning whether it was consistent with the MAPA process. After making these changes, we request comments from our SB325 Work Group. Some of the comments asked for more clarification that this rulemaking meets the intent and requirements of the Clean Water Act, and that is true. We and EPA address those comments. The work group also commented that if there is opportunity for public, EPA, and Department review and comment, they were happy with the rule package that we put forward.

Chairperson Selch: When this was brought forward in the 2015 session, what was the impetus behind it? I know that was back when they were talking about not having standards more stringent than natural background. This is just expanding on that?

Kelly: In my mind this a separate issue because the first part of that statute was the impetus was we can't have standards more stringent than natural. The impetus for the second part was communities facing legacy mining issues and as a result are not able to treat their water quality to our standards. Until there is remediation, what can they do?

Chairperson Selch: Are the standards for those communities lower because of the lack of assimilative capacity?

Myla: That would be a case-by-case basis. It depends on the receiving water body, the mixing zone is, and the permit calculations. Calculations for the permit limits are not the same across the board.

Chairperson Selch: What are the lengths of the variances that would be applied in these situations?

Kelly: There is a requirement of the 5-year review but there isn't a stipulation on the length of the variance.

Salley: For the nutrient variance it is 3 years and for this one it is 5.

Kelly: Five years is typically a permit term. It is specified in statute but I think that's where it came from.

Unknown: The 325 Work Group worked on drafting these rules, those rules go before the BER for adoption, and if they are adopted, DEQ is authorized to implement rules as written. Given that process, when do you expect people may begin to apply for this variance or DEQ will start accepting applications?

Kelly: The formal process to adopt rules takes approximately 6 months. If everything goes smoothly, late 2017.

Mark Fitzwater: I work for the City of Helena Wastewater Plant. We have a a zinc limit which comes from the 10-mile watershed from old mining adits. The water the city is treating for people to drink is 3 mg per liter of zinc. But the limit they're giving us to discharge is 0.3. Would that scenario meet the requirements?

Kelly: Details to work out but that is the perfect scenario of what this variance process was intended to address.

Unknown: Does eliminating the BER review speed up the process? Is it good or bad that one step is eliminated?

Kelly: Yes it does speed up the process. There will still be a public process.

Chairperson Selch asked if there were any other questions, and as there were none, he looked for a motion to adopt the SB325 Rulemaking as described. The motion to recommend rulemaking proceed to the BER at their December meeting was moved and seconded. There was no discussion or public comment. All were in favor and none opposed, so the motion carried.

General Public Comment:
None

First WPCAC Meeting of 2018:
Friday, January 12, 2018

Agenda Items for January 12, 2018 Meeting
Set schedule for the rest of 2018.
Selecting the chair position, vice chair.
Will check with Governor's office on council vacancies prior to January meeting.

Mr. Selch asked for a motion to adjourn. So moved. Second. The meeting adjourned.